

Manny A. Frade (MF7590)  
Max Rayetsky (MR1986)  
Meltzer Lippe, Goldstein & Breitstone, LLP  
*Attorneys for Plaintiff*  
*Seaford Avenue Corp.*  
190 Willis Avenue  
Mineola, New York 11501  
Telephone: (516) 747-0300  
Facsimile: (516) 747-0653  
mfrade@meltzerlippe.com  
mrayetsky@meltzerlippe.com

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

Seaford Avenue Corp.,

Plaintiff,

- against -

ION Insurance Company, Inc.,

Defendant.

Civil Action No.

COMPLAINT

Jury Trial Demanded

Plaintiff Seaford Avenue Corp. (“Plaintiff” and/or “Seaford”), by and through its attorneys, Meltzer Lippe, Goldstein & Breitstone, LLP, for its Verified Complaint against Defendant ION Insurance Company, Inc. (“Defendant” and/or “ION”), alleges as follows:

**JURISDICTION**

1. This Court has subject matter jurisdiction over the above-captioned action (the “Action”) pursuant to 28 U.S.C. § 1332(a)(1) because this is a civil action between citizens of different States and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs.

**VENUE**

2. The venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(b)(2)

because a substantial part of the events or omissions giving rise to Prime's claims occurred, or a substantial part of property that is the subject of the Action is situated in this judicial district.

### **PARTIES**

3. Plaintiff is, and, at all times relevant to this Action, was, a corporation organized and existing under the laws of the State of New York, with its principal place of business located at 25 Brooklyn Avenue, Massapequa, New York 11758.

4. Upon information and belief, Defendant is, and, at all times relevant to this Action, was a corporation organized and existing under the laws of American Samoa, with a principal place of business at 210A 2<sup>nd</sup> Floor, Fagatogo Square, Pago Pago, American Samoa 96799.

5. Upon information and belief, Defendant also maintains an office at and conducts its business operations from 113 Blueridge Road, Deridder, Louisiana 70634.

### **FACTS**

6. Upon information and belief, the Town of Hempstead Housing Authority ("THHA") is the fee owner of the real property, and all of the improvements thereon, located at 255 Lawrence Avenue, Inwood, New York 11096 (the "Property").

7. Upon information and belief, on or about July 17, 2021, the Housing Trust Fund Corporation ("HTFC"), acting through the New York State Governor's Office of Storm Recovery ("GOSR"), as owner, entered into a written agreement ("Prime Contract") with DRG Construction, LLC ("DRG"), as general contractor, to furnish certain labor and materials in connection with a public improvement construction project at the Property (the "Project").

8. Upon information and belief, as required by the Primed Contract, Defendant, as Surety, and DRG, as principal, issued one (1) payment bond (No. IIC/GB/DRG-PMT-2, the "Bond"), dated July 27, 2021, in the amount of \$5,404,363.04 in connection with the Project.

9. Thereafter, DRG engaged Plaintiff to, *inter alia*, furnish labor and materials to repair and replace a defective sewer main at the Project (“Scope of Work”).

10. Plaintiff duly performed its Scope of Work.

11. DRG failed to pay Plaintiff at least \$270,526.43 for the duly performed Scope of Work.

**COUNT ONE**  
**(Breach of the Bond against Defendant)**

12. Plaintiff repeats and re-alleges each and every allegation set forth in Paragraphs “1” through “11” of this Verified Complaint as if fully set forth herein.

13. Plaintiff is a beneficiary and/or claimant of the Bond and is expressly afforded a direct right of action thereunder.

14. Upon information and belief, the Project is ongoing.

15. Plaintiff has satisfied all applicable conditions precedent to the commencement of this Action against Defendant, if any.

16. The total value of labor performed and materials, equipment and/or services Plaintiff furnished in connection with the Project, which remains unpaid, is at least \$270,526.43.

17. Despite due demands, Defendant has failed to make payment to Plaintiff as required under the Bond, leaving the sum of at least \$270,526.43 due and owing to Plaintiff.

18. Defendant’s failure to make payment to Plaintiff constitutes a material breach of the Bond.

19. By reason of the foregoing, Defendant is liable to Plaintiff in an amount to be determined at trial, but believed to be no less than \$270,526.43, plus costs, including legal fees, disbursements and interest.

**COUNT TWO**  
**(Attorneys' Fees against Defendant)**

20. Plaintiff repeats and re-alleges each and every allegation set forth in Paragraphs “1” through “19” of this Complaint as if fully set forth herein.

21. Plaintiff has incurred and will continue to incur attorneys' fees in connection with the prosecution of this Action.

22. Pursuant to New York State Finance Law § 137, Defendant is liable for the attorneys' fees incurred and to be incurred by Plaintiff in the prosecution of this Action.

23. By reason of the foregoing, Defendant is liable to Plaintiff for attorneys' fees interest pursuant to New York State Finance Law § 137.

**WHEREFORE**, Prime respectfully demands judgment as follows:

- A. On Count One, awarding damages in favor of Plaintiff, in an amount to be determined at trial, but in no event less than **\$270,526.43**, plus costs, attorneys' fees, disbursements and interest;
- B. On Count Three, awarding attorneys' fees in an amount to be determined at trial; and
- C. Granting Plaintiff such other and further relief as the Court deems just and proper.

Dated: Mineola, New York  
June 10, 2022

**MELTZER LIPPE, GOLDSTEIN &  
BREITSTONE, LLP**

*Attorneys for Plaintiff*  
Seaford Avenue Corp.

By: 

Manny A. Frade (MF7590)

Max Rayetsky (MR1986)

The Chancery Building

190 Willis Avenue

Mineola, New York 11501

Telephone: (516) 747-0300

Facsimile: (516) 747-0653

mfrade@meltzerlippe.com

mrayetsky@meltzerlippe.com

To: **ION INSURANCE COMPANY, INC.**

210A 2<sup>nd</sup> Floor, Fagatogo Square

Pago Pago, American Samoa 96799

**ION INSURANCE COMPANY, INC.**

113 Blueridge Road